

BABA PEER PARAS NATH AND ANR. ETC.

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v.

STATE OF HARYANA

AUGUST 21, 1996

[G.N. RAY AND B.L. HANSARIA, JJ.]

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Indian Penal Code, 1860 : Sections 307 and 34/109.

Terrorist and Disruptive (Prevention) Activities Act, 1987 : Sections 3(3) and 15.

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Criminal Trial—Accused persons—Confession made by accused—Retraction of confession—Appellants—accused not charged for any offences under TADA—Confessional statements made by appellants not relied upon against them—Designated Court relying on confessional statements made by other accused who were charged under TADA offences convicted the appellants—Held the confessional statement recorded under Section 15 of the TADA is admissible against the co-accused or abettor or conspirator provided an accused is tried with other co-accused abettor or conspirator in the same trial in respect of offence under TADA—Such confessional statement of the co-accused is not admissible against the accused if he is not tried for any offence under TADA—The confessional statements were not admissible so far as the appellants—accused were concerned—As there was no reliable evidence on the basis of which they can be convicted for the offence under Section 107 read with Sections 34 and 109 IPC, the conviction and sentence passed against them cannot be sustained.

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Kartar Singh v. State of Punjab, JT (1994) 2 SC 423, distinguished.

TADA—Conviction under—Validity of—Accused—Retracted confession—Corroboration—Recovery of money paid by accused for engaging terrorists to commit murder of complainant and also to create terror in society and to bring disharmony between Hindu and Sikhs—Recovery of motor cycle used by terrorists from the place of occurrence—The confessional statements though retracted, lend support to the other evidence led in the case about the complicity of the appellants in the offences alleged against them—Held conviction of accused under section 3(3) was justified.

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A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 297 of 1996 Etc.

From the Judgment and Order dated 20.2.96 of the Additional Judge, Designated Court Karnal at Kurukshetra in Sessions Case (TD) No. 27 of 1992, Sessions Trial No. 39 of 1995.

B U.R. Lalit, R.K. Talwar, Goodwill Indeever, Uma Datta and Jasbir Malik for the appearing Parties.

Kamaljeet Kochhar and J.L. Jain for complainant in Crl. A. No. 637/96.

C The following Order of the Court was delivered :

D Both these appeals are directed against the decision dated 20.2.1996 passed by the learned Additional Judge, Designated Court, Karnal at Kurukshetra in Sessions Trial No. 39/95. The appellants in Crl. Appeal No. 297/96 namely Baba Peer Paras Nath and Baldev Nath were tried with the appellants Kashmir Singh and Jaswant Kaur in the other Crl. A. No. 637 of 1996 and also with two other accused Kaka alias Charanjit Singh and Sukhpal Singh Alias Khushbal Singh.

E It appears that the appellants Baba Peer Paras Nath and Baldev Nath Chela were charged for an offence under Section 307 read with Section 34 and Section 109 of the Indian Penal Code and the appellants Kashmir Singh and Jaswant Kaur were charged for offence under Section 307 read with Section 34 and 109 of the I.P.C. and also offences under Sections 3, 4, 5 and 6 of the Terrorist and Disruptive (Prevention) Activities Act, 1987
F (hereinafter referred to as TADA).

G It may be stated here that confessional statements were made by all the six accused persons before the Superintendent of Police under Section 15 of the TADA but later on, the accused retracted with confessional statements. The prosecution case in short is that the appellants Baba Peer Paras Nath and Baldev wanted to kill the complainant Peer Govind Nath in order to take control of Panchmukhi Hanuman Temple at Railway Road, Kurukshetra and for the said purpose through the appellant Jaswant Kaur they had approached two terrorists Puran Singh and Karnail Singh (since deceased) on payment of money and the appellants Kashmir Singh
H and Jaswant Kaur and Kala alias Charanjit Singh and Sukhbal Singh alias

Khushpal Singh, in order to execute the said plan contacted the said two terrorists on 19.6.92. At about 7.30 P.M. the complainant alongwith Om Prakash, Dr. Narinder Prakash and Arun were sitting in a room in the temple. At that time, two young Sikhs came inside the room and on the asking by one of them, as to who was Peer Govind Nath, Peer Gobind Nath had stated that he was the same person. The said two accused then produced a letter head and asked him to read to writing in it. On the letter-head, it was printed in Punjabi as well as in English "Bhinderwala Tiger Force (of Khalisthan)". The contents in the letter-head were written in Punjabi. The said persons disclosed that they were terrorists and also added that they had come to kill him and so saying one of the two terrorists fired a shot from his pistol to Govind Nath put the shot did not hit him because he had bent his neck. In the meantime, the above named three persons, who were sitting with the complainant raised an alarm that the terrorists had come and they would be caught. The complainant and his companions also succeeded in apprehending the terrorist who had fired the shot but the other terrorist could manage to go out of the room. But a number of persons, who had come by that time, succeeded in apprehending the other one.

It appears that since the appellants Baba Peer Paras Nath and Baldev Nath were not charged for any offences under TADA, the confessional statements made by them were not relied upon against them but the learned Designated Court placed reliance on the confessional statements made by the other accused in the said trial by placing reliance on the observation of this Court made in the case of *Kartar Singh v. State of Punjab*, JT (1994) 2 SC 423. In paragraph 277 of the decision, this Court has observed to the following object :

"As the Act now stands after its amendment consequent upon the deletion of Section 21(1)(c), a confession made by a person before a police officer can be made admissible in the trial of such person not only as against the person but also against the co-accused, abettor or conspirator provided that the co-accused, abettor or conspirator is charged and tried in the same case together with the accused, namely, the maker of the confession. The present position is in conformity with Section 30 of the Evidence Act."

The Designated Court by relying on the confessional statements of

A the other co-accused, convicted the appellants Baba Peer Paras Nath and Baldev Nath for offence under Section 307 read with Section 34 and Section 109 of the IPC. Both the said appellants were sentenced to suffer rigorous imprisonment for 3 years and a fine a Rs. 500, in default of payment of fine, to undergo further rigorous imprisonment for 2 months.

B So far as the appellants Kashmir Singh and Jaswant Kaur are concerned, the learned Designated Court convicted them for the offences under Section 307 read with Section 34 and 109 of the IPC and also under Section 3(3) of TADA. For the offence under Section 307 read with Section 34 and 109 of the IPC, they were sentenced to suffer rigorous imprisonment for 3 years with a fine of Rs. 500, in default of payment of fine to undergo further rigorous imprisonment for two months. For the offences under Section 3(3) of TADA, they were sentenced to suffer rigorous imprisonment for five years together with a fine of Rs. 500, in default a payment of fine to undergo further rigorous imprisonment for two months. The learned Designated Court has directed that the sentences would run concurrently.

Mr. U.R. Lalit learned senior counsel appearing for the appellants in Appeal No. 297 of 1996, Baba Peer Paras Nath and Baldev Nath has submitted that there is no clinching evidence about the complicity of the appellants in the offence under Section 307 read with Section 34 and 109 of the IPC. The said appellants have been convicted simply by relying on the retracted confessional statements made by the other co-accused who were tried with the appellants. Mr. Lalit has submitted that normally confessional statement cannot be recorded by the Police Officer but under Section 15 of the TADA a special provision for recording such confessional statement by specified Police Other in the manner indicated in the Act and rules framed under TADA has been made. Such confessional statement made before and recorded by the police officer is admissible only in the trial for an offence under TADA. But where an accused is not tried for an offence under TADA, the confessional statement recorded under Section 15 is not admissible. Mr. Lalit has submitted that in the *Kartar Singh's* case, the vires of Section 15 was challenged before this Court and this Court has upheld the vires of Section 15 after recommending certain safeguards to be followed in the matter of recording confessional statement under Section 15. This Court was not called upon to decide in the case of Kartar Singh as to whether confessional statement recorded under Section 15 of

TADA can be taken into consideration in respect of such of the accused who were jointly tried in a criminal trial even though such of the accused were not charged for any offence under TADA. Mr. Lalit has submitted that Section 15 expressly provides that the confessional statement recorded under Section 15 of TADA shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules framed thereunder, provided the co-accused, abettor or conspirator are tried in the same case together with the accused. He has submitted that the observation made by this Court in paragraph 277 of the decision in *Kartar Singh's* case as indicated hereinbefore is not the decision of this Court on the question that the confessional statement recorded under Section 15 is also admissible in respect of all the co-accused in the trial even though some of co-accused was not tried for any offence under TADA. Therefore, the learned Designated Court wrongly appreciated the decision of this Court in *Kartar Singh's* case and relying upon the confessional statements of co-accused recorded under Section 15 of TADA, convicted the appellants Baba Peer Paras Nath and Baldev Nath despite clear provision of Section 15 indicating that such confessional statement is admissible in respect of the co-accused in the same trial only in respect of offence under TADA, Mr. Lalit has submitted that as the case against the appellants cannot be established by any other evidence excepting by relying on the retracted confessional statements recorded under Section 15, which is not admissible in evidence, the conviction against the appellants cannot be sustained in law. He has, therefore, submitted the appeal should be allowed and the conviction and sentences based against the appellants should be set aside.

Mr. Malik counsel appearing for the State respondent has fairly conceded that under Section 15, the confessional statement of an accused is admissible against co-accused or abettor or conspirator if tried together for an offence under TADA.

Learned counsel for the complainant has, however, submitted that such confessional statement can be looked into against all the accused if the confessional statement recorded under Section 15 of TADA is made by a co-accused when such co-accused is tried in the same case with other accused. The accused tried in a common trial cannot claim immunity from the admissibility of the confessional statement simply because he is not tried for an offence under TADA.

A We are, however, unable to accept the said contention of the learned counsel appearing for the complainant. In our view, Mr. Lalit is justified in his submission that the confessional statement recorded under Section 15 of the TADA is admissible against the co-accused or abettor or conspirator provided an accused is tried with other co-accused abettor or conspirator is the same trial in respect of offence under TADA. Such

B confessional statement of the co-accused or by the co-accused is not admissible against the accused if he is not tried for any offence under TADA. The observation of this Court in paragraph 277 of the decision as indicated hereinbefore is not the decision of this Court about the admissibility of the confessional statement recorded under Section 15 of TADA

C against an accused when such accused is tried with other co-accused, abettor or conspirator but such accused is not charged for any offence under TADA. Accordingly, the confessional statements were not admissible so far as the appellants Baba Peer Paras Nath and Baldev Nath are concerned. As there is no reliable evidence on the basis of which they can

D be convicted for the offence under Section 107 read with Section 34 and 109 IPC. the conviction and sentence passed against them cannot be sustained. We, therefore, allow CrI. A. No. 297 of 1996 and set aside the conviction and sentence passed against both the appellants in the said appeal. The said appellants have been released on bail during the pendency of this appeal. Their bail bounds shall stand discharged.

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So far as the appellants Kashmir Singh and Jaswant Kaur in CrI. Appeal No. 637 of 1996 are concerned, although it has been strenuously contended by the learned counsel appearing for the said appellants that the said retracted confessional statements were not to be taken into consideration and in the absence of any reliable evidence, the confessional

F statements even if admissible against such appellants were of no consequence because confessional statement is to be considered only for giving credence to other independent evidence, we are unable to accept the said contention of the learned counsel. A part of the money which was paid to the appellants for the purpose of engaging the said Puran Singh and

G Karnail Singh has been recovered from the house of the appellants. The letter pad with the print 'Bhinderwala Tigar Forced has also been recovered from the place of the incident. The motor cycle by which the said Puran Singh and Karnail Singh had come for committing the murder of the complainant has also been recovered from the place of occurrence. The confessional statements though retracted, lend support to the

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other evidences led in the case about the complicity of the appellants in the offences alleged against them. In the confessional statements it has been specifically admitted by the appellants that they had accepted the said money not only for the purpose of engaging the assailants to commit the murder of the complainant but also to create terror in the society and to bring disharmony between the Hindus and the Sikhs and to give propaganda of the terrorist outfit Bhinderwala Tiger Force. In the aforesaid circumstances for the overt acts of the appellants for creating terrorism and bringing disharmony between two communities, their conviction under Section 3(3) of the TADA is justified.... we therefore, find no reason to interfere with the conviction and sentences passed against the said appellants. The CrI. A. No. 637 of 1996 is, therefore, dismissed. We have also considered the question of sentence to be passed against the said appellants. Since under Sub-section 3 of Section 3 of TADA, the minimum sentence to be passed for an offence under Section 3, is five years, there is no question to reduce the sentence.

T.N.A.

Appeal dismissed.